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DAFFER MCDANIEL LLP  
P.O. BOX 684908  
AUSTIN, TX 78768

EXAMINER
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BONSHOCK, DENNIS G

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* SCOTT J. BROUSSARD

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Appeal 2008-2534  
Application 09/870,613  
Technology Center 2100

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Decided: November 21, 2008

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Before JAMES D. THOMAS, JOSEPH L. DIXON, and  
LANCE LEONARD BARRY, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-4, 8, 10-12, 14, and 17-20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

## THE INVENTION

Appellant's invented a system and method for reducing memory use associated with the graphical representation of a list control. (Spec. 1). An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A display system, comprising:

a display;

a platform-independent application program containing invocations of platform-dependent display routines to create a display image when operating on a processor having an operating system;

a memory;

a platform-independent software component for fetching list data from the memory for producing a display image of the list data upon the display without invoking a platform-dependent display routine; and

a platform-independent peer component coupled between the platform-independent software component and the platform-independent application program, for intercepting said invocation of platform-dependent display routines and for routing the intercepted invocations to said platform-independent software component.

## PRIOR ART

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

Fults                      US 5,327,529  
Nason                     US 6,727,918 B1

July 5, 1994  
April 27, 2004  
(filed Nov. 28, 2000)

## REJECTIONS

Claims 1-4, 8, 10-12, 14, and 17-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Nason and Fults.

Rather than reiterate the conflicting viewpoints of the Examiner and Appellant regarding the above-noted rejection, we refer to the Examiner's Answer (mailed Aug. 28, 2007) for the reasoning in support of the rejections, and to Appellant's Brief (filed May 22, 2007) for the arguments thereagainst.

## OPINION

In reaching our decision in this appeal, we have carefully considered Appellant's Specification and claims, the applied prior art references, and the respective positions articulated by Appellant and the Examiner. As a consequence of our review, we determine the following.

## PRINCIPLES OF LAW

### 35 U.S.C. § 103(a)

Section 103 forbids issuance of a patent when "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains."

*KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007).

In *KSR*, the Supreme Court emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art," *Id.* at 1739, and discussed circumstances in which a patent might be

determined to be obvious. *KSR*, 127 S. Ct. at 1739 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966)). The Court reaffirmed principles based on its precedent that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* The operative question in this "functional approach" is thus "whether the improvement is more than the predictable use of prior art elements according to their established functions." *Id.* at 1740.

The Federal Circuit recently recognized that "[a]n obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not." *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007) (citing *KSR*, 127 S. Ct. 1727, 1739 (2007)). The Federal Circuit relied in part on the fact that Leapfrog had presented no evidence that the inclusion of a reader in the combined device was "uniquely challenging or difficult for one of ordinary skill in the art" or "represented an unobvious step over the prior art." *Id.* at 1162 (citing *KSR*, 127 S. Ct. at 1740-41).

One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

## ANALYSIS

Appellant argues that the teachings of Nason and Fults do not teach the last two limitations of independent claim 1 concerning a platform-independent software component fetching a list without invoking platform

dependent display routines and that a peer component for intercepting the platform dependent and display routine and routing the intercepted invocations to platform-independent software component. (App. Br. 4-9).

We disagree with Appellant and find that the Examiner's responsive arguments at pages 8-13 of the Answer clearly show that the combination of teachings would have fairly suggested the invention as set forth in independent claim 1. Furthermore, we find that the teachings of Nason at Column 6, lines 20-37, teaches or fairly suggests that the complementary interface may include buttons, menus, and controls. We find that disclosed menus are a form of list and that the teachings of Fults similarly teaches windows, menus, buttons, scrolling lists, document control, and list selection in the generic user interface object. Therefore, we find the two teachings to reinforce that menus and lists were desirable and according to the teachings of Nason, meant for a parallel graphical user interface as taught to "operate independently of the native operating system" and "independent of the desktop and the native operating system." (Col. 4, l. 62-col. 5, l. 4).

Additionally, the Examiner cites Nason to evidence that:

In one embodiment, the alternative display content controller provides an API that intercepts and routes all of the calls to a graphics device interface (GDI) invoked by an application to communicate with the display. For example, in the Windows<sup>TM</sup> environment, the alternate display content controller intercepts all function calls to the GDI application programming interface (API). The controller determines, based upon the coordinates of the window being written to, whether the call should be forwarded to a display driver that can output to an overscan area (a complementary GUI display driver), or whether the call should be forwarded to the native graphics device interface. One skilled in the art will recognize that other combinations are possible, such as part processing of the request by the complementary GUI

display driver before forwarding the request to the native graphics display driver.

(Nason Col. 20, l. 65-col. 21, l. 13).

Here, we find sufficient suggestion of a "peer" to intercept routine calls from a platform-dependent routine and route them to a platform independent routine. With respect to Appellant's argument that the Examiner admits that Nason does not specifically disclose a "peer" component that is list related (App. Br. 6), we find that menus disclosed by Nason would have fairly suggested "lists" wherein menus may be in the form of "lists" as further evidenced by the teachings of Fults, as discussed above. Therefore, we find Appellant's argument to be unpersuasive of error in the Examiner's initial showing of obviousness.

Our review of Appellant's arguments at pages 4-9 of the Appeal Brief to individually address the merits of each of the individual teachings, but does not show error in the Examiner's initial showing of the obviousness of the invention is recited in independent claims 1 and 17 and their respective dependent claims 2-4, 8, 10, 11, and 18-20. Therefore, we will sustain the Examiner's rejection of independent claims 1 and 17 and their respective dependent claims 2-4, 8, 10, 11, and 18-20.

With respect to independent claim 12, Appellant relies upon the same arguments advanced with respect to independent claims 1 and 17 above which we found unpersuasive of error. (App. Br. 10). We find those arguments unpersuasive with respect to independent claim 12. Appellant further argues that the Examiner's reliance upon Java does not provide sufficient motivation for one of ordinary skill in the art to reasonably conclude that the system of Nason necessarily includes a first platform-

independent software component ... for generating a display list image without creating a copy of list data stored by the platform-independent application program. (App. Br. 11). From our review of the Examiner's Answer and responsive arguments, we find that the Examiner has not clearly addressed the limitation "without creating a copy of list data stored by a platform-independent application program." Therefore, we find that the Examiner has not set forth a sufficient initial showing of obviousness of independent claim 12 and dependent claim 14.

### CONCLUSION

In summary, we have sustained the rejection of claims 1-4, 8, 10, 11, and 17-20 under 35 U.S.C. § 103(a), and we have reversed the rejection of claims 12 and 14 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

### AFFIRMED-IN-PART

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DAFFER MCDANIEL LLP  
P.O. BOX 684908  
AUSTIN, TX 78768